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USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: OCT 09 2009

TELETYPE DIAL NUMBER

212-455-2264

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BY FACSIMILE

October 9, 2009

Re: *Kaufman et al. v. HSBC USA Inc. et al.*,  
Case No. 09 Civ 7900 (LTS)

Hon. Laura Taylor Swain  
United States District Court Judge  
Southern District of New York  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl Street  
New York, NY 10007-1312


**MEMO ENDORSED**

Dear Judge Swain:

We represent defendants Michel L. Ainslie, John F. Akers, Roger S. Berlind, Thomas H. Cruikshank, Marsha Johnson Evans, Sir Christopher Gent, Roland A. Hernandez, Henry Kaufman, John D. Macomber, and Christopher O'Meara (the "Lehman Defendants") and Richard S. Fuld, Jr. (collectively, the "Lehman Individual Defendants") in *Kaufman et al. v. HSBC USA Inc. et al.*, Case No. 09 Civ 7900 (LTS). We write pursuant to Federal Rule of Civil Procedure 6(b)(1)(A) to request a brief extension to the Lehman Individual Defendant's time to answer or otherwise respond to the complaint in this action while the parties finalize a stipulation.

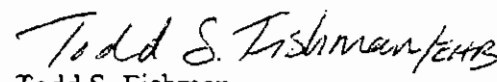
Plaintiff filed the complaint in this action on September 14, 2009. Under the Federal Rules, the Lehman Individual Defendants' current deadline to answer, move or otherwise respond to the complaint is October 13, 2009. Plaintiff's counsel is willing to enter into a stipulation to extend our time to respond upon his return to the country on October 15. See Attachment (email from Plaintiff's counsel stating agreement to execute stipulation to extend response time to November 13, 2009 upon his return).

Therefore, pursuant to Rule 6(b)(1)(A), we respectfully request that the Court grant an extension to October 27, 2009, for the Lehman Individual Defendants' time to answer, move, or otherwise respond to the complaint so that the parties may finalize a stipulation.



Erika H. Burk  
Counsel for the Lehman Individual Defendants

Respectfully submitted,



Todd S. Fishman  
Counsel for Richard S. Fuld, Jr.

The request is granted.

cc: Lloyd De Vos, Esq. (Counsel for Plaintiff)  
Attachment

**SO ORDERED.**

NEW YORK, NY

BEIJING

\_\_\_\_\_, 2

HONG KONG LAURA TAYLOR SWAIN

UNITED STATES DISTRICT JUDGE

TOKYO

**Burk, Erika**

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**From:** Burk, Erika  
**Sent:** Friday, October 09, 2009 9:26 AM  
**To:** 'Lloyd De Vos'  
**Cc:** 'todd.fishman@newyork.allenoverly.com'  
**Subject:** RE: Kaufman v. HSBC et al.

Dear Lloyd,

Thank you for responding to my email. We appreciate that you are out of the country and unable to finalize a stipulation in advance of the Oct. 13 deadline. Therefore, we will put in an application to Judge Swain for a brief extension to enable us to finalize the stipulation upon your return as you have agreed to do.

I do not agree with all of your characterizations of the communications between counsel.

Regards,  
Erika

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**From:** Lloyd De Vos [mailto:ldevos@devos-law.com]  
**Sent:** Friday, October 09, 2009 1:49 AM  
**To:** Burk, Erika  
**Subject:** RE: Kaufman v. HSBC et al.

Dear Erika:

I have been gracious and understanding in my dealings with you to date, but your practice apparently consists of sitting in your office and dealing with other attorneys who sit in their office. You apparently think it appropriate to send requests for stipulation out at 9:00 at night and expect an answer the next day, regardless of anything that your opposing counsel is doing. That is one style of litigation practiced by associated at "big law" law firms, but Federal practice in New York is usually not conducted this way.

I have no access to a printer while I am travelling out of the country. You had asked me whether you could have sixty days to respond to the complaint filed in this matter, and I have told you that I agreed to that time period. Sixty days from September 14, 2009 is November 13, 2009. You said that you would send me a letter to confirm this, but you apparently did not do so.

We have never discussed an open ended stipulation of time until Judge Swain decides to transfer or decides not to transfer this matter to Judge Kaplan. I do not agree to one now.

If you wish to file an application, you are free to do so. Should you do so, please be kind enough to attach this e-mail. If you wish to await my return to my office on Thursday next week, I will be happy to sign a stipulation extending the time for your clients to answer or move to November 13, 2009.

Regards,

Lloyd De Vos

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**From:** Burk, Erika [mailto:EBurk@stblaw.com]  
**Sent:** Thursday, October 08, 2009 5:17 PM  
**To:** Lloyd De Vos  
**Cc:** todd.fishman@newyork.allenoverly.com  
**Subject:** RE: Kaufman v. HSBC et al.

10/9/2009

**Importance:** High

Lloyd, Judge Swain has not decided on the request to transfer the case to Judge Kaplan yet so our deadline to respond is October 12. Please let me know by tomorrow morning whether we have your authorization to sign the stipulation. I am resending the stip and have pasted below the text for your convenience. If not, we'll need to make a Rule 6 application to the Court tomorrow for an extension. Thanks. Erika

# **STIPULATION AND ORDER FOR EXTENSION OF TIME**

## **TO ANSWER, MOVE or Otherwise RESPOND to the Complaint**

WHEREAS Plaintiffs filed the Complaint in this action on September 14, 2009, and the action was assigned to the Honorable Laura Taylor Swain; and

WHEREAS defendants Michel L. Ainslie, John F. Akers, Roger S. Berlind, Thomas H. Cruikshank, Marsha Johnson Evans, Sir Christopher Gent, Roland A. Hernandez, Henry Kaufman, John D. Macomber, and Christopher O'Meara (the "Lehman Defendants") submitted a letter on September 21, 2009 to Judge Swain requesting transfer of this action to Judge Lewis A. Kaplan as a related case and consolidation with *In re Lehman Brothers Securities and ERISA Litigation*, 09 MD 2017 (LAK); and

WHEREAS Plaintiffs have no objection to the transfer of this action to Judge Kaplan as a related case and consolidation with *In re Lehman Brothers Securities and ERISA Litigation*, 09 MD 2017 (LAK),

THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and between Plaintiffs and the Lehman Defendants and Defendant Richard S. Fuld, Jr. (collectively "Lehman Individual Defendants"), by and through their undersigned counsel:

The Lehman Individual Defendants' time to answer, move, or otherwise respond to the Complaint is extended to such time as ordered by Judge Kaplan either prior to or following transfer of this action, or if transfer is denied, to 60 days after the order denying transfer of this action is issued.

The entry into this stipulation by the Lehman Individual Defendants shall not constitute a waiver of any defenses in this action.

Dated: October \_\_, 2009.

DE VOS & CO. PLLC	SIMPSON THACHER & BARTLETT LLP
<p>By: _____                      Lloyd De Vos                      (Ldevos@devoslaw.com)                      DE VOS &amp; CO. PLLC                      1230 Avenue of the Americas                      7th Floor                      New York, NY 10020                      Telephone: (212) 786-1000                      Facsimile: (800) 22301273</p> <p><i>Attorneys for Plaintiffs Bernice Kaufman                      and Irene Kaufman as trustees of the Irene                      Kaufman Trust</i></p>	<p>By: _____                      Michael J. Chepiga                      (mchepiga@stblaw.com)                      Mary Elizabeth McGarry                      (mmcgarry@stblaw.com)                      Erika H. Burk                      (eburk@stblaw.com)                      425 Lexington Avenue                      New York, New York 10017                      Telephone: (212) 455-2000                      Facsimile: (212) 455 2502</p> <p><i>Attorneys for Defendants Michel L. Ainslie, John                      F. Akers, Roger S. Berlind, Thomas H.                      Cruikshank, Marsha Johnson Evans, Sir</i></p>

*Christopher Gent, Roland A. Hernandez, Henry Kaufman, John D. Macomber, and Christopher O'Meara*

**ALLEN & OVERY LLP**

By: \_\_\_\_\_  
Patricia M. Hynes  
(patricia.hynes@newyork.allenoverly.com)  
Todd S. Fishman  
(todd.fishman@newyork.allenoverly.com)  
1221 Avenue of the Americas  
New York, New York 10020  
Telephone: (212) 610-6300  
Facsimile: (212) 610-6399

*Attorneys for Defendant Richard S. Fuld, Jr.*

**SO ORDERED:**

\_\_\_\_\_  
Honorable Laura Taylor Swain  
United States District Judge

Dated: October \_\_, 2009

**From:** Lloyd De Vos [mailto:ldevos@devos-law.com]  
**Sent:** Thursday, October 08, 2009 4:32 PM  
**To:** Burk, Erika  
**Subject:** RE: Kaufman v. HSBC et al.

Dear Erika:

I am out of the country until next Thursday, 15 October, and will respond to your messages when I return.

Regards,

Lloyd De Vos

**From:** Burk, Erika [mailto:EBurk@stblaw.com]  
**Sent:** Wednesday, October 07, 2009 9:12 PM  
**To:** Lloyd De Vos  
**Cc:** todd.fishman@newyork.allenoverly.com  
**Subject:** Kaufman v. HSBC et al.

Lloyd,

As previously discussed, we'd like to send the court a stip this week extending our time to answer or otherwise respond to the Kaufman complaint. Attached is a proposed stip. Please let me know if you have any comments or if we may execute on your behalf.

10/9/2009

Regards,  
Erika

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*Celebrating 125 Years 1884 – 2009*

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10/9/2009